

Federal Trade Commission
Comments: Conoco / Phillips merger
601 Pennsylvania Ave. NW, Rm.2410
Washington, D.C. 20580



Sept. 22, 2002

Re: Problems and concerns

Dear FTC,

I'm writing this letter after months of frustration concerning the upcoming approval of the Conoco / Phillips merger. I have little faith that this one letter will do much in persuading you to make any changes in your order. I have been told that we are of little importance to the billion-dollar deal that awaits these (2) large companies and that our voice and comments would be white washed and be filed never to be heard from again. I have spent countless hours on the phone talking with the FTC and the Utah State Attorney Generals office trying to get someone's attention. I will talk later about our state Attorney General and the problems we have with no enforcement of the below cost selling law that is on the books. You need to know that our family has spent everything we have on building our company and that our hearts and souls are attached firmly to this business of some 50 years. Today you are asking us to trust (Big Brother) in believing what you are doing is right and good for the consumer. If any of us believed that, we would tell you so, but you are so wrong on what you have done in the past and are continuing to do now – I'll explain.

(The Utah Marketers)

I have been asking since spring from Phillips 66 and the FTC to either meet with us Utah marketers or to let us send representatives back to Washington, D.C. and all I have got is lip service. Mark Minna and Brian Wheeler have told me on several occasions that they (The FTC) did proper communications with the marketers of Utah and that they had no real problems with the merger. The (5) largest Phillips Utah marketers have all told me personally that they never talked with the FTC on this issue and that they are upset that our input was buried. We were excited to hear that Phillips 66 had listened to their marketers and aligned themselves with

another large oil company and that we could now survive as we would be on equal ground with any player in the market – We knew they would have what we call STAYING POWER. Little did we know that we would not be part of that merger and would be forced to suffer a slow and painful death as you strip the market of real competition. Why would you not talk with the people (Besides the consumer) who is most affected?

(The Mega Mergers)

This past week I just returned home from the Pacific Oil Conference convention in Reno, NV. Where Bruce Smith, The CEO of Tesoro Oil Company gave the keynote address. One of the first things he talked about was the last few years of FTC approval on these mega mergers. He said that the FTC was operating on old ideals and rules and that such agreements in the future would be tougher to come by, if not impossible, as they catch up with the times. Recent studies and concerns are now pointing to the ill affects of these so called mega mergers which have continued to destroy the smaller players in the market which have effectively over the years kept the larger oil companies honest. Today there are only about 5 mega players left, as the government continues such destructive behavior at the expense of the consumer in the future. Even Phillips 66 and Conoco knew that the future to operate with these super oil companies lied in their ability to also get large, or get out. We as marketers have been pushing Phillips to put us in position to compete against anyone in the market; little did we know that they would be selling us out. We were excited when we first heard the merger; we knew the importance of this STAYING POWER and the advantage and ability to survive against any future competitors.

(Phillips 66 Past History)

Approximately 10 years ago Phillips 66 placed their refinery in Salt Lake City up for sale. We were told it was old, too small, and an environmental liability that they no longer wanted. They later pulled their offer after no players came forth, such a move destroyed the confidence we had in them and slowed their growth from a marketer stand point for many years. In a recent meeting giving by the Trustee to the SLC refinery it was stated that by the year 2006 an additional \$30 million would be needed to meet so-called government mandates with another \$15 million by the year 2009. In a recent article written in New York, a possible buyer for the SLC refinery had now changed their mind about bidding for SLC and gave the following

reason; “ That this acquisition would need to be immediately accretive to earnings right out of the gate.” Such expenses by a new lower level player would come at the expense of the marketer who has been operating in a depressed market unlike any of the past 20 years. We need all the help we can get to support below cost selling programs to keep the marketers whole. No question that the fittest will survive, but the government has tilted the field to the deep pockets and you will see the errors of your ways as marketers face bankruptcy in bunches. Your desire to help Phillips divest of there Salt lake City holdings play right into their hands. They love having to sell or give-a-way their old, small plant; they always wanted the more environmentally friendly pipeline that you are leaving them. Recent percentages show us that even with the combination of Phillips 66 and Conoco retail of 23% that Chevron is still larger at 24%. Who do you think is going to be their competition? Tesoro is in major trouble financially and is facing a total revolt from their marketers and dealers, Sinclair and Flying J are not strong enough on the street and are considered lesser players, Mobil / Exxon and Shell cannot find any product in Utah and you are destroying the most competitive situation you have in Utah. (Next section for explanation)

(2nd and 3rd Level Players)

The FTC thinks they are doing the consumer and the Utah Phillips marketers a favor by leaving the flag with a new company. If (and you are asking us to trust you – sorry) the new player has the money and STAYING POWER then you can assume that the market will be strong. If (and I’m asking you to trust me) the 2nd or 3rd level player runs into money problems and cannot support the marketer on the street like Conoco/Phillips will do with their billions of dollars and STAYING POWER, then we will be left to die a slow death with no, and I repeat no, other legitimate mega players so we can survive against Big Oil and the Hypermarkets.

Even our own government is now looking into the affects that these mega mergers and hypermarkets have had on competition. Sen. Mary Landrieu (D-LA) has requested a full investigation by the GAO, the affects have been that both rural and urban retailers are being destroyed by unfair competition and an unlevel playing field sanctioned by the FTC. Sen. Carl Levin (D-MI) has also weighed in heavily on this issue with a report due out in March. By then this merger will have been approved and the FTC will be reworking their policies and thoughts on what is really happening in the market place.

The positive part of this comes when the FTC will be **forced to reevaluate** your old ideas and models of mega mergers and the affects on the consumer and the family businesses you are destroying.

Today Phillips 66 is our Ally; tomorrow they will be our enemy on the street. The biggest cut rate, below cost seller on the street in Utah, is Smiths/Conoco. We have a law on the books in Utah to stop such practices but our Attorney General lacks the heart to do whats right and prosecute these players. Shortly, this billion dollar company will join the ranks of those companies not worried about selling below cost, I think we call this predatory pricing. An old friend of the marketers, an Attorney General from Colorado, said this “ There are only 2 reasons that these people continue to sell below cost; 1 – they are stupid (Which none of us believe) 2 – they want to run people out of business.” You can put blinders on if you want, or talk about trying to prove intent – you are a part of the system that accepts these unfair levels of competition and your doing the same in Utah!

We are also a Chevron marketer and cannot change any of our 14 Phillips 66 stores because of duplication near our locations. We have no other choices and you are tying us to a (weak sister). The Utah marketers believe the same as I – they do not have any faith in a 2nd level player, the large oil companies, or the government. This would be totally different if you left us with options! Why can't you force Phillips to sell their refinery and all of there assets without putting us into the pool? Bottom line is that we are the real assets and the other would not happen if it weren't for the marketers of this region. I think the government has done us bad and decided to pool us with Phillips 66 company – **we are independent marketers that own our own businesses and you are leaving us no real long term options!**

Please note that all of the marketers are extremely concerned about 1 of the 3 players that are trying to buy the refinery! There was anger and resentment when they were told that one of the players has **NO marketer or refinery experience**. I've already complained enough about a 2nd or 3rd level player and now your letting a no level player with no back ground into the mix, Major concern!!!!!!

(Marketer Retention Fund)

Over the years the Government (FTC) has approved several money type funds in order to keep the competition within the market. Some players have been asked to put large sums of money in a fund helping to alleviate funding concerns. This is and will continue to be my number one issue, we have no options when it comes to major flags in Utah, enormous amounts of money will be needed to keep this low volume refinery running with new regulations coming over the next few years. You are tying us to a possible weak sister who might, or might not, have the money to help us survive. you have destroyed any real competition among the mega merger players. Such funds are used to persuade the marketer to stay the course, and to soften our concerns, about the level of help we would receive from the new owner. This is one area where you can help, several companies have used it throughout the United States, The one I am familiar with is BP/Amoco, used mostly in the North East I believe.

(Conclusion)

We have seen what has happened all over the United States when it comes to these mega mergers, marketer friends of ours have lost hope in being able to survive unless they are of any size. We do not believe (Big Brother) and our day to day experience tells us you are wrong! By the time we are able to show you the errors of your ways many will fall, a victim of too much government intervention and manipulation – competition works when it is fair and equal whether small or large business.

We have tried unsuccessfully by phone and letter and even asked our Utah representatives to get you to us or us to you. You have been fed data by Big Oil and have no idea concerning the marketing concerns, family businesses will suffer if not die from your mandates.

Who ever takes over will have to be making money right out of the chute. The partner we will get will not match up with any of the mega players in the market; the new owner must be able to support the marketer's at large levels because of the below cost selling problems throughout the state. You are playing right into Phillips 66 hands, they never wanted SLC refinery anyway – you left them with what they wanted, the pipeline!!!

Are you really preserving the brand and the competition? Hate to tell you the brand is not better than the owner! You sell us out to a weak sister, or someone with no experience, how long do you think we'll last against a mega player like Conoco/Phillips or a Chevron/Texaco? Why can't you see why we are so concerned? We know, we have been in business longer than most of you have been born – We believe we understand the business quite well and you guys don't even take the time to talk with the Largest Utah Phillips 66 marketer to ask us our concerns!!! Ya – were a little upset !!!

The Jobber retention fund or the pot of gold fund, (Another name I've heard used) seems like a way to relieve many of these issues I have stated. Have a company put their money where their mouth is – the trusting part comes so much easier.

I called and talked with Mark Minna and he talked with me for several hours but the one thing I will never forget is his comment of how much pressure he was under to get this done and to move on it in a hurry. It didn't matter if things were wrong, or if important people were left out of the information process, or even if many of these family businesses would be destroyed – it only mattered that the \$\$Billion\$\$ dollar merger take place! Shame on you for leaving out the most important thing

(People / Families)

We don't want you to guarantee us an income, just a level and fair playing field!!!! We'll never be able to compete under your terms!!!!

Regards,



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